REMARKS

Introduction

Claims 1-45 were originally submitted with the application as filed. Claims 1-31 and 37-45 had previously been withdrawn from consideration without prejudice pursuant to a restriction requirement, and have now been cancelled by this Amendment to expedite prosecution. Applicant reserves the right to file one or more divisional applications which include the cancelled claims. Claims 32-36 are now pending in this application and have been rejected. No claims have been allowed.

Rejections under 35 U.S.C. § 102

The Examiner has rejected Claim 32 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,013,222 to Douglas, et al. As Applicant understands it, the Examiner has taken the position that elements recited in Applicant's claims such as "non-linear pattern" and "first plastic extrudant . . . visible within the layer" pertain to the extrudant itself and "do not affect the apparatus as claimed." Responsive thereto, Applicant has amended Claim 32 to specifically call for a method of producing a plastic extrudant. As such, the elements relating to the plastic itself are now positively recited in claim 32 and must be considered under a § 102 analysis.

However, "[f]or a prior art reference to anticipate in terms of 35 U.S.C. § 102, every element of the claimed invention must be identically shown in a single reference." *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677 (Fed. Cir. 1988). Since the Examiner has conceded that the '222 patent to Douglas does not specifically teach the claimed limitations directed to the extrudant, a § 102 rejection of amended claim 32 is not sustainable. Applicant therefore respectfully requests that the Examiner withdraw the § 102 rejection over Douglas.

Similarly, the Examiner has rejected claims 32-34 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,542,686 to Bansal. Again, however, Applicant's amendment makes clear that the plastic extrudant layer that the Examiner concedes is not taught by the Bansal reference is now positively recited. Because Bansal does not teach all of Applicant's claim recitations identically, the § 102 rejection thereover is inappropriate. Applicant therefore respectfully requests that the Examiner withdrawn this rejection.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 35-36 under 35 U.S.C. § 103(a) as being unpatentable over the '686 patent to Bansal in view of U.S. Patent No. 6,143,342 to Weinstein et al.

Bansal teaches a method and apparatus for making marbled pet food by merging a red pet food stream with a white pet food stream, partially mixing the merged pet food stream, expressing the partially mixed pet food stream through a shaping die, and cutting the expressed pet food stream into pet food pieces.

The '342 patent to Weinstein teaches dividing flowing dough with a die dividing member to impart a gap in it that is filled with a second dough and food coloring. With reference to Fig. 3, dividing member 47 creates gaps or passageways 44, 45 and 46. Die insert 20 is configured to add a second dough and food color into the gaps or passageways. In contrast to the disclosure of the Bansal reference, the swirl pattern of Weinstein is not achieved by blending two different materials and rotating them, but instead by forming gaps in one extrudate in the shape of the pattern, and then filling the gaps with a second extrudate and food color.

Applicant respectfully requests that the Examiner withdraw this rejection for several reasons.

First, the rejections to claims 32-34 have now been addressed, and Applicant asserts that claims 32-34 are now in condition for allowance. Claims 35 and 36 depend from allowable claims 32-34 and are thus also in condition for allowance.

Second, the combined references do not teach all of Applicant's claim limitations. *See In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988) (Board erred by failing to appreciate that the appealed claims can be distinguished over the combination of references). In addition to the dimensional specifics of the outlets recited in claim 36, Claims 35 and 36 call for a partially transparent second plastic extrudant, and the first plastic extrudant of the mixture being visible within the layer due to the second plastic extrudant of the mixture being at least partially transparent. Bansal and Weinstein alone or in combination do not suggest nor even hint at these claimed features.

Third, Applicant submits that there is no incentive to combine the teachings of Bansal and Weinstein. *See, e.g., In re Geiger*, 815 F.2d 686, 688 (Fed. Cir. 1987) (obviousness cannot be established by combining the teachings of the prior art to produce the claimed

invention absent some teaching, suggestion, or incentive supporting the combination). While Bansal and Weinstein both produce a patterned extrudate, they each produce such a pattern in entirely different ways, as discussed above. Bansal partially mixes and rotates two extrudates whereas Weinstein teaches forming gaps in one extrudate and filling the gaps with another extrudate. A skilled artisan in search of a better apparatus for producing a patterned extrudate would not combine the teachings of these references because they each teach entirely different methods for producing patterned food products.

Fourth, and finally, "[i]n order to rely on a reference as a basis for rejection of an Applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *See* MPEP § 2141.01(a) at p. 2100-115 (citing *In re Oetiker*, 977 F.2d 1443 (Fed. Cir. 1992)). "A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem." *Id.* (citing *In re Clay*, 966 F.2d 656,659 (Fed. Cir. 1992)).

Bansal and Weinstein are both outside the field of Applicant's endeavor. Bansal discloses an apparatus for making extruded pet food nuggets with a meat-like pattern, and Weinstein discloses an apparatus and methods for making multiple, complexly-patterned food products, such as rings, stars, letter, footballs, baseballs and other sports balls. The present disclosure, however, relates to an apparatus for making extruded plastic sheets and laminations thereof. Neither Bansal nor Weinstein relate to making extruded and partially transparent plastic sheets. One of skill in the art in plastic extrusion would not look to equipment for the production of cereal and pet food to address the problems solved by Applicants in creating patterned and partially transparent plastic sheets and laminations thereof.

For at least these reasons, Applicant submits that claims 35 and 36 are patentable over the combination of Bansal and Weinstein.

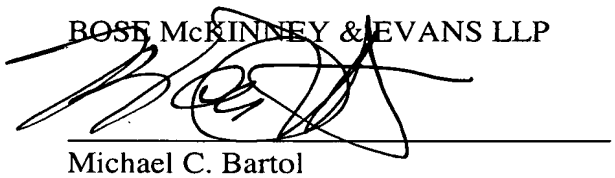
Final Remarks

Applicant submits that none of the prior art of record discloses or suggests the combination of elements claimed in claims 32-36. Accordingly, Applicant respectfully requests that the Examiner issue a Notice of Allowance in due course.

If necessary, please consider this a Petition for Extension of Time to effect a timely response. Please charge any additional fees or credits to the account of Bose McKinney & Evans, LLP Deposit Account No. 02-3223. In the event that there are any questions related to these amendments or to the application in general, the undersigned would appreciate the opportunity to address those questions directly in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,

BOSE McKINNEY & EVANS LLP



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